



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

right to take under the wills. *Held*, that the foster son take. *Fitzgerald v. Ayers*, 179 S. W. 289 (Tex.).

It is well established in the common law that there is no presumption of survivorship or of simultaneous death where persons meet death in a common disaster. *Underwood v. Wing*, 19 Beav. 459; *Newell v. Nichols*, 12 Hun (N. Y.) 604. It is a fact to be proved by the claimant. *Wing v. Angrave*, 8 H. L. Cas. 182; *Newell v. Nichols*, *supra*. When the claimant cannot establish the survivorship, under the English view, the gift over fails and the property passes into the residuum, or by intestacy. *Elliott v. Smith*, 22 Ch. Div. 236; *Re Alston*, [1892] P. 142; *Wing v. Angrave*, *supra*. Precisely the same result is reached in this country, where the property is distributed as if the deaths were simultaneous. *Johnson v. Merilhew*, 80 Me. 111; *Re Willbor*, 20 R. I. 126. In the United States, however, effect has been given, in construing a will providing for a gift over if the principal legatee "dies before I do," to the obvious intention of the testator that if, for any reason, the primary beneficiary cannot take the property with an effective power to dispose thereof, the gift over is to prevail. *Y. W. C. Home v. French*, 187 U. S. 401; *St. John v. Andrews Institute*, 191 N. Y. 254, 83 N. E. 981. This construction, even in cases where the claimant would take under one of two "twin" wills if either testator survived the other, has been refused in England, although forcefully urged by Lord Campbell. See dissenting opinion, *Wing v. Angrave*, *supra*, at 196. Under the American construction the defendant in the principal case takes without the necessity of establishing a survivorship. This seems obviously the only just result.

WITNESSES — PRIVILEGED COMMUNICATIONS: PHYSICIANS — WAIVER IN INSURANCE POLICY. — The plaintiff sued on a life insurance policy which was to become void if the insured died in the violation of law and in which the insured waived her statutory privilege as to communications with her physicians. The testimony of two attendant physicians that she died of an abortion was admitted. A statute provided that no physician should be allowed to disclose any information acquired in his professional attendance on patients. 3 MICHIGAN COMP. LAWS, § 10181. *Held*, that the waiver will not be given effect. *Gilchrist v. Mystic Workers of the World*, 154 N. W. 575 (Mich.).

The purpose of the statute in the principal case, which is to encourage recourse to physicians and free communication of symptoms, a subsequent waiver would not defeat. See 3 NEW YORK REVISED STATUTES (1836), 2 ed., p. 737; *Edington v. Mutual Life Ins. Co.*, 67 N. Y. 185, 194. See 4 WIGMORE, EVIDENCE, § 2380. Similar statutes in other states, also expressed as an absolute disqualification of the physician, have been construed as privileges of the patient which he may waive without restriction. *Adreveno v. Mutual, etc. Life Ass'n*, 34 Fed. 870 (C. C. Mo.). See *Penn. Mutual, etc. Co. v. Wiler*, 100 Ind. 92. For the general rule is that a privilege solely for the benefit of individuals may be waived by such individuals. See *State Trust Co. v. Sheldon*, 68 Vt. 259, 260, 35 Atl. 177, 178. And when the purpose of a statute can only be achieved by the suppression of probative evidence and hence of the truth, the operation of such statute should be strictly limited to the necessities of that purpose. Although no court has made the distinction, it, nevertheless, seems arguable that the waiver in the principal case, being prior to the consultation with the physician, would check the confidence that the statute was intended to foster. However, it is more than doubtful that the advantage of securing confidence in the few cases where disclosure would be so distasteful to the patient as to be deterrent, outweighs the disadvantage of suppression of evidence that the privilege unnecessarily entails. See *Renihan v. Dennis*, 103 N. Y. 573, 580, 9 N. E. 320, 322; *Connecticut Life Ins. Co. v. Union Trust Co.*, 112 U. S. 250, 254. See 4 WIGMORE, EVIDENCE, § 2380.